SPONSOR: Rep. J. Johnson & Rep. D. Short & Sen. Lavelle & Sen. Poore

DELAWARE STATE HOUSE
149th GENERAL ASSEMBLY

HOUSE BILL NO. 18

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO HABITUAL CRIMINALS.

WHEREAS, the General Assembly enacted legislation in 2016 (Senate Substitute 1 for Senate Bill 163) that was designed to ensure fairness in the minimum mandatory sentences associated with the state's habitual offender statute; and

WHEREAS, questions have arisen regarding the legislature's intent to focus upon the minimum mandatory sentences imposed by the habitual offender statute, as opposed to those sentences where sentencing judges have complete discretion with respect to sentencing; and

WHEREAS, the General Assembly also wishes to clarify that in enacting S.S. 1 for S.B. 163, it did not intend to reduce any specific minimum mandatory sentences that already exist for specific crimes.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4214(a), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4214. Habitual criminal; life sentence.

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. <u>Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.</u>

Section 2. Amend § 4214(e), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

Section 3. Amend § 4214(f), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to 4214(a) of this title, or a life sentence pursuant to 4214(b) of this title prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not

53 inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner,
54 all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this
55 subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the
56 applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if
57 released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its
58 review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified
59 sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By
60 January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed
61 under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to
62 the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer
63 exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of
64 record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

SYNOPSIS

This bill clarifies the General Assembly's intent last session in amending the state's habitual offender law, specifically (a) that the changes made by the General Assembly were intended to affect minimum mandatory sentences, not sentences where judges had already exercised complete discretion, (b) that the changes were not designed to reduce minimum mandatory sentences associated in the Delaware Code with specific crimes (e.g. illegal gun possession), and (c) allows the sentencing judge to impose probation after the minimum mandatory sentence required by this section.